TAN LEONG WEI & ORS

v.

OMAR AHMAD

HIGH COURT MALAYA, PULAU PINANG
RK NATHAN J
[CIVIL APPEAL NO: 12-380-2002]
18 AUGUST 2004

DAMAGES: *Fatal accident - Appropriate multiplier - Deceased 21 years' old at time of accident - Whether multiplier of 16 could be reduced - Whether High Court bound by Chan Chin Min & Anor v. Lim Yoke Eng*

TORT: *Negligence - Road accident - Collision from rear- Liability - Whether 100% upon motorist colliding into rear of motorcyclist*

The deceased motorcyclist was collided into from the rear by a motorcar driven by the first defendant. He was then flung onto the path of a bus driven by the third defendant. In the Sessions Court, the first defendant was found 70% liable and the third defendant 30% liable. The deceased was 21 years' old, unmarried, and selling burgers at a stall. He was said to be earning RM900 per month out of which he supposedly gave RM600 per month to his father - as a dependant. Counsel for the dependant/plaintiff claimed RM600 per month for 16 years. The Sessions Court however awarded RM300 per month for 10 years. The third defendant appealed against liability and the plaintiff cross-appealed against damages.

Held (allowing the appeal but dismissing the cross-appeal with costs):

[1] The first defendant was totally liable. From the evidence, there was no liability as against the third defendant. (p 657 a-b)

[2] The High Court is bound by the decision in *Chan Chin Min & Anor v. Lim Yoke Eng* which allowed the reduction of the statutory multiplier from 16, under s. 7 of the Civil Law Act 1956, to a reasonable and appropriate figure. There was therefore no reason to interfere with the discretion exercised by the sessions judge. (pp 657 h & 658 a)

Case(s) referred to:
Chan Chin Min & Anor v. Lim Yok Eng [1994] 3 CLJ 687 SC ***(refd)***
Teow Teik Chai & Anor v. Mohamad Hashim (Mahkamah Rayuan Malaysia, Kuala Lumpur, Rayuan Sivil No: P-04-95 Tahun 1995) (Unreported) ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 7

For the 1st & 2nd appellants/defendants - Veerasamy Rajendran; M/s Dass, Jainab & Assocs
For the 3rd & 4th appellants/defendants - P Ramanathan; M/s VP Nathan Partners
For the respondent/plaintiff - DP Rajah; M/s Rajah & Co

Reported by Andrew Christopher Simon

JUDGMENT

RK Nathan J:

Facts

On 26 December 1999 at about 6.20pm the deceased was riding his motorcycle along Jalan Dato' Ismail Hashim, Pulau Pinang and proceeding from the direction of Sungai Ara towards the direction of Relau. At the same time a motorcar driven by the 1st defendant and owned by the 2nd defendant was proceeding in the same direction as the deceased motorcyclist and from the deceased's rear. At the same time too, a motorbus was being driven by the 3rd defendant and owned by the 4th defendant and was proceeding from the opposite direction.

The deceased's father sued as a dependent. The plaintiff having no eye-witness to the accident relied on the evidence of the 1st defendant and his police report. The plaintiff established through the investigating officer that there was a break in the road leading towards Relau and that there was a junction on the right as one faces Relau leading to Taman Tunas Muda. The investigating officer testified that at the break there were double lines indicating that a motorist intending to turn into Taman Tunas Muda and cross the other half of the road, must stop for through traffic. The investigating officer also testified that the deceased's motorcycle was damaged at the rear with its rear body part being pushed inwards. On the other hand the motorcar's front right head light was broken with its front bumper and mudguard dented. There were no damages to the bus.

Having heard the evidence the Sessions Court found the 1st defendant 70% liable and the bus driver namely the 3rd defendant 30% liable. This is an appeal by the bus driver against the finding of 30% liability against him.

Findings Of This Court

Having heard submissions I allowed the appeal and found the 1st defendant totally liable. After the deceased was collided into from the rear by the 1st defendant, he was flung onto the path of the oncoming bus driver. I found that from the evidence, there was no liability against him. So far there is no appeal filed against this decision. I also directed that the driver of the said motorcar be prosecuted for dangerous driving based on the evidence before this court.

Cross-appeal

The deceased cross-appealed against the award of damages. I heard submissions and dismissed the cross-appeal. Dissatisfied with my decision the deceased then filed a notice of appeal to the Court of Appeal.

The deceased was 21 years, unmarried and was selling burgers at a stall. The owner of the stall testified that he paid the deceased RM30 per day and that he received RM900 per month. There was however no documentary evidence to support this. At least the employer could have produced receipts of bulk purchases of raw burgers and onions and buns to show how much he was earning. If he was paying the deceased RM900 it must mean that his income must have exceeded this.

Further, the employer had no licence to sell burgers and the deceased knew this.

The father testified that out of a sum of RM900 the deceased used to give him RM600 per month. Based on this, Rajah for the deceased submitted for 16 years at RM600 per month. The defence contended that since the earnings were from an unlicenced source the court should make no award. However in the alternative, the defence submitted RM200 for ten years.

The court awarded RM300 per month for ten years. Dissatisfied with that decision, Rajah cross-appealed.

In *Chan Chin Min & Anor v. Lim Yok Eng* [1994] 3 CLJ 687 the then Supreme Court admirably dealt with the issue as to why the courts can reduce the multiplier from 16 to a figure it felt was reasonable and appropriate. The court drew an excellent distinction between the words "loss of support" as stated in s. 7(3) and "loss of earnings" as stated in s. 7(3)(iv)(d) of the Civil Law Act 1956. This same view was accepted by Mokhtar Sidin JCA in the

unreported decision in *Teow Teik Chai & Anor v. Mohamad bin Hashim*, Dalam Mahkamah Rayuan Malaysia Di Kuala Lumpur (Bidangkuasa Rayuan) Rayuan Sivil No: P-04-95 Tahun 1995 where the Court of Appeal upheld the High Court's decision in allowing a multiplier of eight years for a 24 year old bachelor for the support of his father.

I am aware that of late another panel of the Court of Appeal has refused to follow the decision of the Supreme Court in *Chan Chin Min*. I am a conservative. I am bound by the ruling of the Supreme Court. I therefore dismissed this cross-appeal of the plaintiff with costs as I found no reason to interfere with the discretion exercised by the judge of the Sessions Court.